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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/422,046	10/20/1999	STEPHEN J. BROWN	HERO-1-1025	5000

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BLACK LOWE & GRAHAM
816 SECOND AVE.
SEATTLE, WA 98104

EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT PAPER NUMBER

3626

DATE MAILED: 05/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/422,046

Applicant(s)

Brown

Examiner

Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 25, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 54, 58, and 59 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54, 58, and 59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

1. Claims 54, 58 and 59 are presented for examination. Applicant filed a Request for Continued Examination on 3/20/2001 canceling pending claim 1 and adding new claims 54-66. Applicant filed an amendment on 2/25/2002, canceling claims 55-57 and 60-66 and amending claims 58 and 59. After careful consideration of Applicant's arguments, the Examiner maintains the rejection of claims 54, 58 and 59.

Response to Amendment

2. In light of Applicant's amendment to the specification, the Examiner withdraws the objection to the priority data under 35 USC 120. Therefore, the instant application meets the conditions for receiving the benefit of an earlier filing date under 35 USC 120.
3. The affidavit filed on 2/25/2002 under 37 CFR 1.131 has been considered but is ineffective to overcome the Fujimoto reference.
4. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Fujimoto reference to either a constructive reduction to practice or an actual reduction to practice. As a preliminary matter the Examiner notes that a copy of the draft of the application and a copy of the letter to Mr. Jim Anable that were referenced in the affidavit were missing. In addition, the affidavit failed to disclose evidence of facts establishing reasonable diligence from the period just prior to the priority date of the Fujimoto reference (just prior to

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10/27/1992) up to the date of a reduction to practice (i.e. constructive - filing date of the instant application). The entire period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses (see MPEP 715.07 and 2138.06). Therefore, the Declaration is insufficient to establish diligence as required by 37 CFR 1.131 and the Declaration is still ineffective to overcome the Fujimoto reference. The grounds of rejection of claims 54, 58 and 59 based on 35 USC 102 are maintained by the Examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 54, 58 and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Fujimoto, Pat. No. 5,339,821.

As to claim 54, Fujimoto discloses a patient interface system for use in collecting and transferring data from a patient to a remote monitoring system (i.e. home monitoring system)(Fig. 1 and col. 2, lines 34-55), said system comprising:

(a) a patient data input and data receiving means (see Figure 1, unit 8) comprising:

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(I) a sensor comprising a monitoring unit for monitoring a physiological parameter and producing a measurement (Fig. 1, unit 1 and col. 3, lines 3-6); and

(ii) an interrogation means comprising a means for creating visual and audio signals (Fig. 1, unit 8, col. 2, lines 65-69 and col. 9, lines 1-4);

(b) a processing means capable of receiving and storing data from said patient data input means (i.e. CPU 25 and memory 33)(Fig. 1, unit 8, Fig. 4, col. 3, lines 30-45);

c) a communication means capable of transferring said processed patient data from said processing means to a remote monitoring system and receiving instructional data from said remote monitoring system (col. 6, lines 18-30 and col. 8, lines 8-13).

As to claim 58, Fujimoto discloses the system according to claim 54, wherein said interrogation means further comprises at least one of a keyboard, and a plurality of buttons (Fig. 2, units 15, 16, and 17).

As to claim 59, Fujimoto discloses the system according to claim 54, wherein said communication means comprises at least one of a modem and a serial interface (Fig. 1 and col. 2, lines 43-50).

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Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 8:30 AM to 6:00 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-0040.

Alexander Kalinowski *AK*

5/14/2002


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2000 3600